C.S. 1001 — 4

IN THE HIGH COURT OF JUDICATURE:CHHATTISGARH: BILASPUR

WRIT PETITION NO. : 2968 OF 2006

PETITIONER :

RAM DAS SINGH
aged 33 yrs.
s/o Shri Sonsai
r/o Gram :Mukhtiyarpara
Tah :Manendragarh
Distt: Korea CG

- VERSUS -

RESPONDENTS

1. Balram Singh
s/o Shri Shivmangal Gond
r/o Gram : Mukhtiyarpara
Tah : Manendragarh
Distt: Korea CG

P.R. No. 3015/06
Presented by Shri Anurag Shrivastava
dated 22/6/06

2. Kamala Singh
s/o Shri Basant Gond

3. Pran Singh
s/o Shri Subran singh
Gond

RE[illegible]-COPY
CLE[illegible] BILASPUR
22/6/06

4. Fakeer Singh
s/o Shri Bihari Singh

5. Santlal
S/o Jeetrai Gond

all r/o :
Gram: Mukhtiyarpur
Tah : Manendragarh
Distt: Korea CG

6. The Sub-Divisional Officer
Tah - Manendragarh
Distt- Korea CG

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

AFR

87

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 2968 of 2006

Petitioner : Ram Das Singh

Versus

Respondents : Balram Singh S/o Shri Shivmangal Gond and others

Post for order on 4th December, 2006

Sd/-
Satish K. Agnihotri
Judge

88

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 2968 of 2006

Petitioner : Ram Das Singh

Versus

Respondents : Balram Singh S/o Shri Shivmangal Gond and others

Single Bench: Hon'ble Mr. Justice **Satish K. Agnihotri**.

Shri Anurag Dayal Shrivastava, counsel for the petitioner.

None appears for the respondents No. 1 to 5.

Shri N.K. Agrawal, Deputy Advocate General with Shri Arun Sao, Deputy Government Advocate for the respondent No. 6/State.

ORDER

(4th December, 2006)

1. The present writ petition filed under Article 226/227 of the Constitution of India challenges the correctness and validity of the order dated 18.5.2006 (Annexure P/1) passed by the Sub Divisional Officer, (R.), Manendragarh, District Koria in Election Appeal No. 234/B [2]/2004-2005, whereby the election of the petitioner (non-applicant No. 1 in the Court below) on the post of Sarpanch was set aside and the office of the Sarpanch in the Gram Panchayat, Muktiyarpara was declared as vacant.

2. The indisputable facts in brief and steps leading to this petition are that the petitioner was elected as Sarpanch of the Gram Panchayat, Muktiyarpara, Tahsil Manendraaarh

89

District Koria, held on 20.1.2005. The respondent No. 1 (election petitioner) filed a petition under Section 122 of the Chhattisgarh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (hereinafter referred to as "the Adhiniyam, 1993") seeking a relief that the election of the writ petitioner be declared as void and unlawful on the ground that the third child of the petitioner was born after 26.1.2001, which is a disqualification for being an office-bearer of Panchayat as prescribed under Section 36 (m) of the Adhiniyam, 1993. The Sub Divisional Officer, in the election petition, filed under Section 122 of the Adhiniyam, 1993, declared the election of the petitioner as void and the office of Sarpanch of the Gram Panchayat, Muktiyarpara was declared vacant.

3. Being aggrieved, the returned candidate namely the petitioner filed this petition challenging the impugned order dated 18.5.2006 (Annexure P/1) passed by the Sub Divisional Officer (R.), Manendragarh in Election Appeal No. 234/B [2]/2004-2005 on the grounds that the petition was not filed in accordance with the statutory requirement as prescribed under the Chhattisgarh Panchayats (Election Petitions, Corrupt Practices and Disqualification For Membership) Rules, 1995 (hereinafter referred to as "the Rules, 1995"). Rule 5 of the Rules 1995 prescribes that the election petition shall

90

be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (V of 1908), for the verification of pleadings. Rule 7 of the Rules, 1995, which requires for depositing the security amount with the specified officer, has also not been complied with, as the specified officer under Section 122 of the Adhiniyam, 1993 is the Sub Divisional Officer, as the security was deposited with the Tahsildar, not with the specified officer. The finding of the Sub Divisional Officer that the third child of the petitioner was born after 26.1.2001 is also erroneous.

4. Shri Anurag Dayal Shrivastrava, learned counsel appearing for the petitioner would submit that the compliance of Rule 5 and Rule 7 are mandatory. Failure to comply with the statutory requirement leads to dismissal of the petition under Rule 8 of the Rules 1995. It was further contended that the election petitioner (respondent No. 1) has moved an application on 16.8.2005 before the specified officer for withdrawing the election petition. The said application was dismissed and the Sub Divisional Officer proceeded with the case, which is not permissible in law. It was further contended that the election petition has been decided without framing proper issues.

5. Shri N.K. Agrawal, learned Deputy Advocate General with Shri Arun Sao, learned Deputy Government Advocate

97

appearing for the respondent No. 6 would contend that the security amount was deposited with the Tahsildar, who is a Sub-ordinate officer to the specified officer. Thus, the deposit amount with the Tahsildar is sufficient compliance of the Rule 7 of the Rules 1995. On the question of verification, learned counsel for the petitioner would submit that the defect of not presenting petition duly verified in the manner laid down in the Code of Civil Procedure, 1908 (V of 1908), for the verifications of pleadings is a curable defect and that cannot be the sufficient ground for dismissal of the petition.

6. With regard to non-framing of issues by the Sub Divisional Officer, it was contended that though the specified officer had not framed issues, however, the specified officer had gone into all aspects, while deciding the election application filed by the respondent No. 1.

7. Despite service of notice to the respondents No. 1 to 5, the respondents No. 1 to 5 have not chosen to appear in the matter.

8. I have heard learned counsel for the petitioner as also learned counsel appearing for the respondent No. 6 and perused the petition, return and documents appended thereto. To appreciate the submission of the parties, it is

necessary to quote relevant provisions of law. The relevant provisions are quoted below,

Rule 2 (d) of the Rules 1995 reads as under:-

"Rule 2 (d) "Specified Officer" means the Officer specified in sub-section (1) of Section 122 of the Act in relation to Gram Panchayat, Janpad Panchayat and Zila Panchayat, as the case may be."

Rule 5 of the Rules 1995 reads as under:-

"Rule 5 Contents of the petition.- An election petition shall-

(a) contain a concise statement of all material facts on which the petitioner relies;

(b) set forth with sufficient particulars, the grounds on which the election is called in question;

(c) be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (V of 1908), for the verifications of pleadings."

Rule 7 of the Rules, 1995 reads as under:-

"Rule 7 Deposit of security.- At the time of presentation of an election petition, the petitioner shall deposit with the specified officer a sum of Rs. Five Hundred as security. Where the election of more than one candidate is called in question, a separate deposit of an equivalent amount shall be required in respect of each such returned candidates."

Rule 8 of the Rules 1995 reads as under:-

"Rule 8 Procedure on receiving petition.- if the provisions of rule 3 or rule 4 or rule 7 have not been complied with, the petition, shall be dismissed by the specified officers:

Provided that the petition shall not be dismissed under this rule without giving the petitioner an opportunity of being heard."

Rule 13 of the Rules 1995 reads as under:-

"Rule 13 Withdrawal of election petition.-(1) No election petition shall be withdrawn without the leave of the specified officer.

(2) If there are more petitioners than one, no application to withdraw a petition shall be made except with the consent of all the petitioners.

(3) When an application for withdrawal is made, a notice thereof fixing a date for the hearing of the application shall be given to all other parties to the petition.

(4) No application for withdrawal shall be entertained after the evidence of the petitioner is over.

(5) If the application is granted, the petitioner shall be ordered to pay the costs of the respondents thereto as incurred or such portion thereof as the specified officer may deem fit."

9. In the case of **M. Karunanidhi Vs. Dr. H.V. Hande and others etc.**[1], the Supreme Court observed in paras 19 and 30, as under:-

"19.....it is always important to bear the distinction between the mandatory and directory provisions of a statute. Sub-section (1) of the Section 117 is in two parts. The first part of sub-section (1) of Section 117 provides that at the time of presenting an election petition, the petitioner shall deposit in the High Court a sum of Rs

94

2000 as security for the costs of the petition, and the second is that such deposit shall be made in the High Court in accordance with the rules of the High Court. The requirement regarding the making of security deposit of Rs 2000 in the High Court is mandatory, the non-compliance of which must entail dismissal in limine of the election petition under sub-section (1) of Section 86 of the Act. But the requirement of its deposit in the High Court in accordance with the rules of the High Court is clearly directory. As Maxwell on the Interpretation of Statutes, 12th Edn., at p. 314 puts it : "An absolute enactment must be obeyed or fulfilled exactly, but it is sufficient if a directory enactment be obeyed or fulfilled substantially." The rule of construction is well settled and we need not burden the judgment with many citations.

30..... it has already been stated that mandatory provisions must be fulfilled exactly whereas it is sufficient if directory provisions are substantially fulfilled....."

10. In the case of **Amarsingh s/o Hiralal Vs. Sub-Divisional Officer Khilchipura and others**[2], the High Court of Madhya Pradesh, while considering the similar issue of deposit of security amount with the prescribed authority held that the deposit of sum of Rs. 250/- as security cost is mandatory, thus, non-compliance of mandatory provisions of Rule 7 is that the election petition suffers from fatal defects.

95

Consequently, the Sub Divisional Officer had no option than to dismiss the petition.

11. In the case of **V. Narayanaswamy Vs. C.P. Thirunavukkarasu**[3], the Supreme Court observed para 23, as under:-

> "23.....Non-compliance with the provisions of Section 83 may lead to dismissal of the petition if the matter falls within the scope of Order 6 Rule 16 and Order 7 Rule 11 of the Code of Civil Procedure. Where neither the verification in the petition nor the affidavit gives any indication of the sources of information of the petitioner as to the facts stated in the petition which are not to his knowledge and the petitioner persist that the verification is correct and the affidavit in the form prescribed does not suffer from any defect the allegations of corrupt practices cannot be inquired and tried at all. In such a case the petition has to be rejected on the threshold for non-compliance with the mandatory provisions of law as to pleadings. It is no part of the duty of the court suo motu even to direct furnishing of better particulars when objection is raised by the other side. Where the petition does not disclose any cause of action it has to be rejected. The Court, however, cannot dissect the pleadings into several parts and consider whether each one of them discloses a cause of action. The petition has to be considered as a whole. There cannot be a partial rejection of the petition."

12. In the case of **R.P. Moidutty Vs. P.T. Kunju Mohammad and another**[4], the Supreme Court observed in para 35, as under:-

> "35. All the averments made in paras 1 to 17 of the petition have been stated to be true to the personal knowledge of the petitioner and in the next breath the very same averments have been stated to be based on the information of the petitioner and believed by him to be true. The source of information is not disclosed. As observed by the Supreme Court in F.A. Sapa v. Singora[7] the object of requiring verification of an election petition is to clearly fix the responsibility for the averments and allegations in the petition on the person signing the verification and, at the same time, discouraging wild and irresponsible allegations unsupported by facts. However, the defect of verification is not fatal to the petition, it can be cured (see Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore[9] and A.S. Subbaraj v. M. Muthiah[10]). In the present case the defect in verification was pointed out by raising a plea in that regard in the written statement. The objection was pressed and pursued by arguing the same before the Court. However, the petitioner persisted in pursuing the petition without proper verification which the petitioner should not have been permitted to do. In our opinion, unless the defect in verification was rectified, the petition could not have been tried. For want of affidavit in the required form and also for lack of particulars, the allegations of corrupt practice could not have been enquired into the tried at all. In fact, the present one is a fit case where the petition should have been rejected at the threshold for non-

97

compliance with the mandatory provisions of law as to pleadings"

13. In the case of **Regu Mahesh Alias Regu Maheshwar Rao Vs. Rajendra Pratap Bhanj Dev and another**[5], the Supreme Court observed in paras 12 and 18, as under:

> "12. It is, therefore, a settled position in law that defect in verification or an affidavit is curable. But further question is what happens when the defect is not cured. There is a gulf of difference between a curable defect and a defect continuing in the verification affidavit without any effort being made to cure the defect.
>
> 18..... The onus on the election petitioner is heavy as he has to substantiate his case by making out a clear case for interference both in the pleadings and in the trial. Any casual, negligent or cavalier approach in such serious and sensitive matter involving great public importance cannot be countenanced or glossed over too liberally as for fun."

14. In the case of **Chandrakant Uttam Chodankar Vs. Dayanand Rayu Mandrakar and others**[6], the Supreme Court observed in para 68, as under:-

> "68. In Ch. Subbarao v. Member, Election Tribunal[10] the Constitution Bench accepted the submission of the learned counsel appearing for the appellant therein to the effect that the election petition was not to be equated to an election at law or in equity, but as the rights are purely creature of the statute, if the statute renders any particular requirement mandatory, the courts possess and can exercise no dispensing power to waive non-compliance.

98

The Constitution Bench following Murarka Radhey Shyam case[1] held: (AIR pp. 1033-34, para 26)

"We do not however consider that there is really need for so much refinement when one has to look at whether there is a substantial compliance with the requirement of this provision. If the signatures now found on the copies were intended to authenticate the document to which it is appended viz. the copy, it would only mean that the copy did not reproduce the signature in the original. There is no compelling necessity to hold that the signatures were merely intended to be a copy of those on the original in order to spell out a non-compliance with Section 81 (3), seeing that a signature in original was not needed on the copy and a writing copying out the name of the signatory would suffice."

15. In the case on hand, admittedly, the petitioner has not complied with the mandatory requirement as prescribed under Rule 5 (c) of the Rules, 1995. There is no verification of pleadings and the affidavit filed by the respondent No. 1 does not disclose source of information contained in the pleadings. The verification at the bottom of the affidavit verifies contents of the affidavit to the extent of name of the deponent, residence of the deponent and filing of the petition. Thus, it amounts to non-compliance of the mandatory requirement of Rule 5 of the Rules, 1995.

99

16. It is a curable defect. The respondent No. 1, it appears, has not exercised his option to cure the defect, but filed an application for withdrawal of the petition on 16.8.2005, which was rejected. With regard to compliance of Rule 7 of the Rules 1995, the respondent No. 1 has, admittedly, deposited a sum of Rs. 500/- with the Tahsildar, who is not a specified officer as defined under Rule 2 (d) of the Rules, 1995. Deposit of the security amount is a mandatory requirement as held by the Supreme Court in the case of **M. Karunanidhi Vs. Dr. H.V. Hande and others etc.** (supra). The deposit of the security amount with any officer, other than the specified officer, may be a Sub-ordinate officer, does not satisfy the mandatory requirements of the provisions of Rule 7 of the Rules, 1995. Thus, in absence of compliance of the mandatory provisions of the Rules, 1995, this petition ought not to have been tried on merits, even otherwise the same would have been dismissed at threshold. Thus, it is not necessary to go into merits. The petition filed before the specified authority is accordingly dismissed.

17. As a result and for foregoing reasons, this petition is allowed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

---

[1]{(1983) 2 SCC 473} [2]{1997 (2) M.P.L.J 192}
[3]{(2000) 2 SCC 294} [4]{(2000) 1 SCC 481}
[5]{(2004) 1 SCC 46} [6]{(2005) 2 SCC 188}